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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/839,451	04/20/2001	David Corts	4232-4002	4838

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EXAMINER	
CHAMPAGNE, DONALD	
ART UNIT	**PAPER NUMBER**
3622	

MAIL DATE	DELIVERY MODE
07/03/2007	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No.	Applicant(s)	
	09/839,451	CORTS ET AL.	
	Examiner	Art Unit	
	Donald L. Champagne	3622	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *13 April 2007*.

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-212* is/are pending in the application.

4a) Of the above claim(s) *32-67 and 130-212* is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-31 and 68-129* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

DETAILED ACTION

Claim Rejections - 35 USC § 102 and 35 USC § 103

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

3. Claims 1-4, 6-31, 68-74, 76-102 and 104-129 are rejected under 35 U.S.C. 102(e) as being anticipated by Abecassis (US006192340B1).

4. Abecassis teaches (independent claims 1, 29-31, 68, 96-99 and 127-129) a method, apparatus, and computer readable medium encoded with said method, for coordinating supplemental data transmissions with broadcast data transmitted by at least one broadcaster, the method comprising:

receiving schedule information (*providing a broadcast schedule*, col. 16 lines 40-46) for at least one broadcaster (*a plurality of providers*, col. 11 lines 1-2, and *one or more Multimedia Players **431** delivering radio-on-demand services*, col. 11 lines 22-30)[1], the schedule information including a broadcast schedule;

identifying, from the received schedule information, broadcast data for transmission (*audio items for downloading*, col. Col. 16 line 42) by a first broadcaster (*A radio-on-demand*

[1] Also, from col. 11 lines 3-12: *Participants in the network ... are both providers and end users ...* .

*provider system **411***, col. 11 line 32, *simultaneously access(es) a variety of audio and information resources*, col. 11 lines 27-28, *retrieving from a Multimedia Player an end user's music, information and technical preferences*, col. 11 lines 36-37);

determining supplemental digital data (*information*, col. 22 lines 65-67, col. 2 lines 11-19 and col. 11 lines 38-40) to be transmitted to listeners of the broadcast data on a digital data receiver (col. 8 lines 49-51),

transmitting at least a portion of the supplemental data to at least one broadcaster (*the received informational items*, col. 2 line 65 to col. 3 lines 4, where *audio library* is defined at col. 2 lines 36-53) prior to the scheduled time of at least one said broadcast.

5. For independent claims 99 and 127-129, *Multimedia Player **100*** reads on a traffic management system (Fig. 1 and the explanation beginning at col. 5 line 25).

6. Abecassis also teaches at the citations given above claims 8-10, 78-80 and 106-108; claims 14-17, 84-87 and 112-116; claims 19-21 and 117-119; claims 22, 23, 89, 90 120 and 121, where the seller of advertising data is nonfunctional and was accordingly not given patentable weight; and claims 24-28, 91-95 and 122-126.

7. Abecassis also teaches claims 2-4, 11-13, 18, 72-74, 81-83, 88, 100-102, 109-111 and 116 (col. 1 lines 34-67); and claims 6, 7, 76, 77, 104 and 105 (col. 11 line 19).

8. Claims 5, 75 and 103 are rejected under 35 U.S.C. 103(a) as being obvious over Abecassis (US005819160A). Abecassis does not teach side band radio broadcasting. This limitation was common at the time of the instant invention. Official notice of this common knowledge or well known in the art statement was taken in the last Office action (para. 13, mailed 14 December 2006). This statement is taken to be admitted prior art because applicant either failed to traverse the examiner's assertion of official notice or that the traverse was inadequate. (MPEP 2144.03.C.)

Response to Arguments

9. Applicant's arguments filed with an amendment on 13 April 2007 have been fully considered but they are not persuasive.

10. Applicant argues,

> "Abecassis merely discloses the playing of audio that is responsive to an individual user's pre-established music and informational preferences wherein each user receives their own separate stream which fails to teach, disclose or suggest Applicant's claim 1, as amended, of a 'real-time,' 'receiving schedule information for at least one broadcaster, the schedule information including a broadcast schedule' and 'identifying, from the received schedule information, broadcast data for transmission by at least one broadcaster.'" (Last sentence in the first para. of p. 49.)

First, "real time" is not explicitly disclosed in the application, much less claimed. Second, although the rejection explains specifically where in the reference every limitation of claim 1 is taught, applicant does not offer specific argument or evidence to refute the rejection. This fails to comply with 37 CFR 1.111(b) because applicant's arguments amount to a general allegation that the claims define a patentable invention without distinctly and specifically pointing out the supposed errors in the examiner's action.

11. Applicant alleges (pp. 49-52) what the reference and the spec. do or do not teach. Nowhere does applicant distinctly and specifically point out the supposed errors in the rejection. For an effective traverse, applicant need point out precisely where the rejection is lacking. The applicant has not done that.

12. It is not the examiner's job to argue hypothetical points having no direct bearing on the rejection, but for applicant's benefit it must be noted that applicant's arguments appear to be very selective. In the middle of p. 49, for example, applicant cites col. 16, lines 40-44 as evidence that the reference teaches only downloading "substantially in advance of a programming cycle". The rejection cites col. 16, lines 40-46. The last two lines ignored by applicant read, "or more or less contemporaneously, e.g., in advance of each song transmitted." "Contemporaneously" reads on "real time".[2]

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[2] As noted in the 20 March 2007 interview summary, the examiner also interprets the following as teaching a real time process: "and/or v) audio items downloaded from, captured, or otherwise obtained from, a broadcasted signal such as a transmission from an FM station or satellite." (Abecassis, col. 2 lines 51-53)

Conclusion

13. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

14. A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

15. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Donald L Champagne whose telephone number is 571-272-6717. The examiner can normally be reached from 9:30 AM to 8 PM ET, Monday to Thursday. The examiner can also be contacted by e-mail at donald.champagne@uspto.gov, and *informal* fax communications (i.e., communications not to be made of record) may be sent directly to the examiner at 571-273-6717. The fax phone number for all *formal* matters is 571-273-8300.

16. The examiner's supervisor, Eric Stamber, can be reached on 571-272-6724.

17. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

18. **AFTER FINAL PRACTICE** – Consistent with MPEP § 706.07(f) and 713.09, prosecution generally ends with the final rejection. Examiner will grant an interview after final only when applicant presents compelling evidence that "disposal or clarification for appeal may be accomplished with only nominal further consideration" (MPEP § 713.09). The burden is on

applicant to demonstrate this requirement, preferably in no more than 25 words. Amendments are entered after final only when the amendments will clearly simplify issues, or put the case into condition for allowance, clearly and without additional search or more than nominal consideration.

19. Applicant may have after final arguments considered and amendments entered by filing an RCE.

20. **ABANDONMENT** – If examiner cannot by telephone verify applicant's intent to continue prosecution, the application is subject to abandonment six months after mailing of the last Office action. The agent, attorney or applicant point of contact is responsible for assuring that the Office has their telephone number. Agents and attorneys may verify their registration information including telephone number at the Office's web site, www.uspto.gov. At the top of the home page, click on Site Index. Then click on Agent & Attorney Roster in the alphabetic list, and search for your registration by your name or number.

Donald L. Champagne
Primary Examiner
Art Unit 3622

23 June 2007

DONALD L. CHAMPAGNE
PRIMARY EXAMINER